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RIGHTS OF THE CHILD

REPORT OF THE SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Report submitted by Mrs. Ofelia Calcetas-Santos, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1995/79

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Introduction

1. At its fifty-first session, the Commission on Human Rights decided, by its resolution 1995/79, to renew for a further period of three years the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography. The Commission also requested the Secretary-General to prove assistance to enable the Special Rapporteur to submit an interim report to the General Assembly at its fiftieth session and a report to the Commission at its fifty-second session. In accordance with that resolution and with General Assembly resolution 49/210, the Special Rapporteur submitted an interim report to the General Assembly (A/50/456, annex).

2. The present report, covering the period October 1994 to November 1995, is submitted in accordance with Commission on Human Rights resolution 1995/79.

3. In her interim report to the General Assembly, the Special Rapporteur started by looking at her mandate in general terms, rather than immediately getting into specific situations and cases, and decided to analyse the information available in the present report. Therefore, in this report, the Special Rapporteur will consider all the information received since the end of 1994 with regard to the mandate. In order to get more updated information, on 21 July 1995, the Special Rapporteur sent notes verbales, letters, as well as a questionnaire concerning the justice system as a catalyst, to Governments, specialized agencies, intergovernmental and non-governmental organizations. She will also examine the replies to the questionnaire.

4. The Special Rapporteur wishes to convey her thanks to the Governments, specialized agencies, and governmental and non-governmental organizations which provided her with valuable information. She would also like to reaffirm her close cooperation, in accordance with Commission resolution 1995/79, with, inter alia, the Committee on the Rights of the Child, which she addressed on 30 May 1995, the Working Group on Contemporary Forms of Slavery, the competent United Nations bodies in the field of human rights and the Commission on Crime Prevention and Criminal Justice, the fourth session of which she attended in June 1995.

I. METHODOLOGY

5. The mandate of the Special Rapporteur covers three specific issues: the sale of children, child prostitution and child pornography. The Special Rapporteur considered it necessary to set boundaries not only with respect to the mandate as a whole but also within the three concerns of the mandate. It was not intended to restrict the fields of application but simply to avoid, as much as possible, any overlapping or duplication of efforts. As an example, the issues of child labour or involvement of children in armed conflicts should be taken up only with respect to instances which are connected with any one of the three specific concerns of the mandate. Even within the mandate itself there was a need to have more precise definitions in order to obviate confusion and overlapping between sale, prostitution and pornography. For this purpose, the Special Rapporteur defined the three specific issues of the mandate.

6. The sale of children was defined as "the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration". This definition would exclude transactions which are strictly on a temporary basis, as when a child is "rented" out, and would therefore create less confusion as to whether a transaction constitutes sale or prostitution or pornography. She also considered that sale of children, as a pernicious practice, should be condemned regardless of the motivation or the purpose for which it is done. Some of the cases of sale that have been more or less substantiated have been for commercial adoptions, for prostitution, for pornography and for the exploitation of labour. There have been some allegations that children have been sold to take part in armed conflicts, and for organ transplantation.

7. Child prostitution was defined as "the act of engaging or offering the services of a child to perform sexual acts for money or other consideration with that person or any other person". Under this definition, child prostitution is not "committed" by the child itself, but by the person "engaging or offering the services of a child"; this definition intends to lessen confusion concerning other forms of child exploitation and abuse.

8. The Special Rapporteur considered that there could hardly be any better illustration of the complications brought by the advent of modern technology than in the field of pornography, including child pornography. In the light of recent developments, where the telephone or other audio devices are also being widely used for pornographic messages involving children, there was a need to distinguish visual from audio pornography. Thus, she defined visual pornography as "the visual depiction of a child engaged in explicit sexual activity, real or simulated, or the lewd exhibition of genitals intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material". Audio pornography was then defined as "the use of any audio device using a child's voice, real or simulated, intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material". This should be distinguished from the use of audio devices to offer the sexual services of a child, which would then be considered as solicitation so as to fall within the ambit of prostitution, not pornography.

9. In her report to the General Assembly, the Special Rapporteur also reviewed the diverse causes giving rise to the sale of children, child prostitution and child pornography. Different factors have been identified by the previous Special Rapporteur, Prof. Vitit Muntarbhorn, and by different forums addressing children's concerns. They are multidimensional, ranging from structural or systematic to individual and less organized incursions against children. It should be remembered, however, that each one usually involves an interaction with one or more of the others. That review aimed at making an analysis of what should be addressed on a priority basis and what steps would be most effective in search for solutions.

10. In that report, the Special Rapporteur also identified three catalysts in instituting reforms benefiting children. They are the justice system, the education system and the media.

11. The Special Rapporteur will now concentrate on new developments and information which came to her attention within the reporting period and will, in section II, consider more in depth all the information sent by governmental and non-governmental sources at the national and international levels, with respect to the three issues of concern to the mandate. Section III will be devoted to the selected catalysts mentioned above and section IV to conclusions and recommendations.

II. NATIONAL AND INTERNATIONAL DEVELOPMENTS

A. Sale of children

12. The Special Rapporteur considered that the sale of children should be condemned regardless of the motivation or the purpose for which it is done, as it reduces the child to an article of trade and grants the parents or any "seller" the power to dispose of him as if he were a chattel.

1. Trafficking in minors

13. The end of the cold war facilitated mobility between countries and continents. It also brought the development of cross-border crimes to a more organized and highly sophisticated level, including trafficking in children both on the local and the international level.

14. There is no international convention specifically covering this problem. So far, there are also no systematic studies at the international level, and the modalities and intricacies of child trafficking are to a large extent still to be established.

15. States parties to the Convention on the Rights of the Child are obliged to "take all national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form" (art. 35).

16. The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography (Commission resolution 1992/74, annex), provides, inter alia, for exchanging information and reporting to the International Criminal Police Organization (ICPO/Interpol) to enable a special data bank to be set up on suspects involved in cross-border trafficking, sale or sexual exploitation of children (para. 35).

17. International traffic in minors has been defined under the Inter-American Convention on International Traffic in Minors, approved at the Fifth Inter-American Specialized Conference on Private International Law of the Organization of American States on 18 March 1994, in Mexico City, as "the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means" (emphasis added). "Unlawful purpose" includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State party where the minor is located. "Unlawful means" includes, among others, kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of

the parents, persons or institution having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State party where the minor is located.

2. Sale for commercial adoption

18. In a broad non-legal sense, adoption has been defined by Professor Muntarbhorn as the institutionalized social practice through which a person, belonging by birth to one family or kinship group, acquires a new family or kinship ties that are socially defined as equivalent to biological ties which supersede the old ones, whether wholly or in part. He also made the distinction that in the legal sense, it implies that the adopted child becomes entitled to all the rights, including hereditary rights, to which the biological child would be entitled - "filiation". The non-legal concept of adoption would include some adoption-like arrangements which fall short of transferring complete parental authority or which do not grant the adopted child the entitlements of a biological child. Adoption may take place on a domestic basis, as when both the adopter and the adopted are citizens and/or residents of the same country. It may also be on a transnational basis, as when the adopter and the adopted are citizens and/or residents of different countries.

19. The Special Rapporteur agreed with the above definitions. What is not clear, however, is when adoption, legal or non-legal, could be considered commercial adoptions so as to fall within the range of sale of children. While adoption generally represents an ideal solution that works to the benefit of both the adopter and the adopted, it can also be the subject of extraneous considerations that can negate any regard for the best interests of the child, like the prospect of financial gain. In actual practice, adoption is almost always coupled with some exchange or consideration, whether by way of payment of fees to intermediaries like adoption agencies or by way of direct reward or remuneration to the parents. Article 21 of the Convention on the Rights of the Child warns against "improper financial gain" for those involved in transnational or intercountry adoption. It does not, however, specify the standards as to when financial gain may be considered as "improper".

20. The Special Rapporteur feels that financial gain is "improper" for legitimate or authorized adoption agencies if it is exorbitant or unconscionable, taking into account the actual expenses or degree of services rendered. However, for any person or organization not so authorized, including the parents, any consideration, no matter how small, is "improper", and therefore should not be allowed. This rule should apply not only to intercountry adoptions, but to domestic or local adoptions as well.

21. The Special Rapporteur took note of some of the problems attendant on intercountry and domestic adoptions. One of the most significant problems in intercountry adoption is that it may be a guise for the more sinister purposes of child trafficking for the sexual market or for cheap, if not unpaid, labour. The high cost of legal domestic adoption has given rise to a proliferation of alternative methods, mostly involving the falsification of birth documents.

22. A new development on the international scene is surrogacy or "womb for hire" arrangements which may have legal implications never faced before. There are reports that this phenomenon has been legalized in some countries. The Special Rapporteur believes that this issue must be thoroughly researched and all its implications, moral, legal and medical, established in order to have a better understanding of the complexities. One issue is whether this arrangement constitutes sale or adoption.

(a) Legal framework for adoption

23. The Convention on the Rights of the Child contains many basic principles concerning adoption, obliging State parties to take measures to combat the illicit transfer and non-return of children abroad (art. 11).

24. The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly resolution 41/85, annex) provides that, in intercountry adoption, the placement should be made through competent authorities and should in no case result in improper financial gain for those involved in it (art. 20).

25. The Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993, approved by the Hague Conference on Private International Law, lays down a fairly detailed set of factors to be considered before an intercountry adoption is effected.

(b) National developments

26. Various countries have introduced laws to control intercountry adoptions, permitting them only as a last resort, the major consideration usually being the best interest of the child.

27. The United Kingdom, a party to the Hague Convention, expressed its concern over allegations surrounding child trafficking by a British national in Turkey. The Turkish Government was unable to take the case any further because it lacked sufficient evidence to convict. Unfortunately, the British courts have limited exterritorial jurisdiction over actions occurring abroad which do not constitute criminal offences under British law. The Government is reviewing its existing adoption laws which at present recognize adoption orders made in foreign courts. It is possible that the review process will result in more stringent conditions for the recognition of foreign adoptions.

28. In some Eastern European countries, intercountry adoptions became common after the collapse of communism. The existence of clandestine markets in various Eastern European countries is considered a part of the supply factor. Likewise, concern over the potential sale of children for adoption in conflict areas such as the former Yugoslavia and neighbouring States is being raised. In view of this, the call for legislation on adoption and promotion of the implementation of the Convention on the Rights of the Child in the concerned countries is heightening. A case in point is Spain where a new Penal Code had been drafted that contains provisions to counter fictitious maternal delivery and false paternity and trafficking through adoption.

29. There were reports in the press of a British couple who attempted to smuggle a baby girl, whom they had allegedly bought from her parents, out of the country of her birth. The couple admitted to having paid $6,000 to someone who had apparently helped other British couples before. A couple who had previously adopted a baby girl from the same country claimed that there were no adoption laws at the time, and that had they been aware of the new laws they would have complied with them. It is illegal in the United Kingdom to pay for a child for adoption and, should it be known that payment has been made, entry clearance would be refused.

30. The laws in the Syrian Arab Republic prohibit adoption but permit the fostering of children. Legislative Decree No. 107 of 1970, as amended by Act No. 34 of 1980, entrusted the implementation of the Decree to the Ministry of Social Affairs and Labour.

31. Armed conflicts result in the separation of many children from their parents, which may lead to adoption or adoption-like situations. The conflicts in the former Yugoslavia and Rwanda are key cases in point. It is imperative to assist the children to trace their relatives before any consideration of adoption, or the equivalent, by outsiders. In 1994, the International Committee of the Red Cross and the United Nations High Commissioner for Refugees issued a joint statement on the evacuation of unaccompanied children from Rwanda, which contained the following message:

> "Children in an emergency context are not available for adoption. Since most unaccompanied children are not orphans, what they need is suitable interim care with a view to possible reunification with their families, not adoption. Staying with relatives in extended family units is a better solution than uprooting the child completely. Serious efforts to trace family members are essential before a child is considered eligible for adoption ... Adoption should not be considered unless a reasonable time (normally at least two years) has passed, during which all feasible steps to trace the parents or other surviving family members have been taken."

32. This message was reinforced by the Declaration on the Rights of Children in Armed Conflict (Declaration of Amsterdam), adopted on 21 June 1994 by an international conference on that subject.

3. Sale for prostitution

33. The sale of children for prostitution has increased in areas where poverty is prevalent.

34. In Asia, it is estimated that 1 million children are involved in the sex trade under conditions that are indistinguishable from slavery. Many of these children are sold by their parents into sex rings that often involve corrupt policemen and politicians. Children from rural villages are reportedly lured by travel agents who offer domestic or factory jobs to support their families but who are instead sold into prostitution. Criminal gangs are also said to operate child-kidnapping rings in Cambodia, China, the Lao People's Democratic Republic, Myanmar and Viet Nam. There are also reports that in some

countries, many daughters are sold to distant brothels by parents, simply for the cash. One young girl was reported to have been sold when she was 13 to a "tea house" where she served numerous customers. Another report involves three friends who had travelled from their remote mountain village to the district market to trade. They were sold into prostitution by a monk who approached them and lured them by promises of good jobs in a neighbouring country. One of the girls finally escaped, only to fall into the hands of a woman who sold her to another brothel. Ten months later she escaped and sought refuge at a centre for the protection of children's rights, which arranged for her to be repatriated. Another 14-year-old girl was reportedly sold to a brothel by her sister. After a week she wanted to go home but was persuaded by the brothel owner to remain for the money.

35. In North American neighbourhoods infested with drugs, there are reports of parents who sell their children for a few dollars or in exchange for drugs. According to a recent United States Department of Health and Human Services report, it is estimated that up to 300,000 child prostitutes are on the streets of the United States, many of whom have been found to be only 11 or 12 years of age and some as young as 9.

4. Sale for pornography

36. Sale for pornography must be distinguished from the act of "renting out" the child for a specific period for the purpose of being utilized for either visual or audio pornography.

5. Sale for the exploitation of child labour

37. Aware of the importance of education and the necessity of combating the exploitation of child labour, Thailand adopted in 1992 a policy which provides children with more educational opportunities and expands the period of compulsory education from six to nine years, so children would enter the labour market when they are at least 15 years old. This is considered to be a suitable age to start working, because children are deemed mentally and physically mature enough to withstand the rigors of city and industrial working life.

38. In certain parts of West Africa, the exploitation of child labour is common in the form of domestic help. According to reports of NGOs, under-age children are sold to wealthy families and subjected to rigorous work and also sometimes physically and sexually abused.

6. Sale for the use of children in armed conflicts

39. The sale of children for use in armed conflict is reportedly not common and, indeed, rarely occurs. However, the use of children in armed forces is on the increase in areas where there are ongoing conflicts.

40. The Henry Dunant Institute in Geneva carried out a research project on the recruitment and participation of children as soldiers in armed conflicts and the psychological effects this has on these children.

7. Sale for organ transplantation

41. The sale of organs for purposes of organ transplantation is a very sensitive issue that should be addressed with a great deal of prudence as it can cause unwarranted alarm. There are reports concerning the phenomenon but there seems to be no hard evidence as to its actual practice. However, the matter should be seriously looked into by all the agencies concerned, especially the World Health Organization and the United Nations Children's Fund. Efforts should be directed towards gathering evidence rather than mere anecdotal reports so that more positive action may be taken in terms of preventive and/or remedial measures.

42. In this connection, the Special Rapporteur took note of the efforts made at the international level on this issue, like the Convention on the Rights of the Child, WHO's Guiding Principles on Human Organ Transplantation and the resolution passed by the European Parliament in 1993 prohibiting trade in organs for transplant.

43. Various allegations concerning the sale of children for organ transplantation were sent by NGOs and individuals. The Government of Colombia, however, sent a communication refuting the allegations surrounding the story of Jaison Cruz's loss of eyesight, on which a documentary had been made and shown all over the world. The Colombian Embassy in France requested that an examination be carried out by French ophthalmologists, whose report showed nothing to support the allegations that the child's corneas had been extracted for commercial purposes. On the contrary, it established that the boy had lost his eyesight due to acute infection. The hospital implicated in this story has also instituted legal action which has not as yet been concluded.

44. It has also been alleged that sale for organ transplantation actually takes place in various developing countries for export to developed countries.

45. In Brazil, Interpol, at the request of the Brazilian authorities, has been cooperating in investigating allegations of the existence of a linkage between criminal trafficking and illegal adoptions of children. To date, however, none of the allegations contained concrete data upon which the police could start their inquiries. The Minister of Health has decided to create a system of verification of all organ transplant operations in the country, by which donors and recipients of organs have to declare the origin of the transplanted organs and demonstrate that consent for the transplantation has been obtained; the establishment of medical ethics committees is also envisaged.

46. Many countries in Asia have moved towards passing legislation to regulate organ transplantation, including India and the Philippines. Hong Kong has also taken such steps, as has Israel.

47. Certain sources claim that no evidence has been submitted to support the allegations of sale for organ transplantation. In many countries the sale or purchase of organs is expressly forbidden by law with stiff penalties for violators. Apart from the moral and legal deterrents to organ trafficking, the technical requirements are so formidable that such clandestine activities,

it is maintained, would be a practical impossibility. Sophisticated surgical equipment and highly skilled medical personnel would be necessary for such operations to take place.

48. Despite allegations of commercial organ transplants in certain countries in Europe, inter alia Albania, Austria, Germany, Italy, Poland and Switzerland, there exists no evidence to support such allegations.

8. Sale for other purposes

49. Early marriages in certain areas can be seen as an indirect form of sale of children. Girls are betrothed at an early age for a price (dowry). The trend has worsened over time in a number of countries.

50. This issue of blood donation has also given rise to some concern. Due to poverty children are allegedly lured into donating blood for a fee. In order to meet the demands of customers, blood bank owners allegedly employ brokers who procure blood by securing street children, either by force or by offering money. In one case, it was reported that a 15-year-old boy donated blood until he became anaemic.

51. At the time of writing of this report, the East Asia and Pacific Regional Office of UNICEF was scheduled to hold a regional training workshop on trafficking in children for sexual exploitation in Phnom Penh from 12 to 15 December 1995.

B. Child prostitution

52. The most commonly cited cause of prostitution is the need arising from poverty. But there may be other considerations for the existence and proliferation of child prostitution in some developed countries. In North America, for example, juvenile street prostitutes are reported to be products of broken homes and neglect in middle class communities.

53. The cause for the demand side of paedophilia is more difficult to analyse. Paedophilia is generally defined as an abnormal attraction to young children. According to common usage, a paedophile is a person whose preferred sexual partner is a young person under the age of 18, including children below the age of puberty. Paedophiles are usually described as male, but an increasing number of female paedophiles are being found.

54. For obvious reasons, it is not known how many active paedophiles there are in each country. The British researcher Parker Rossman, however, estimates the number to be some 50,000 in the United States, and 500,000 worldwide. Paedophiles are big consumers of child pornography. In an American study carried out by D. Gene Abel, professor of psychiatry at the Emory University of Medicine in the United States, it was found that 403 persons had exploited 67,000 children, 63 per cent of whom were boys. Following the death of the Australian man Clarence Osborn, photographs, notes and tape recordings were found which documented the incredible number of 2,500 boys with whom he had had sex. These cases were cited at the expert group meeting on children and juveniles in detention: application of human rights standards (Vienna, 30 October-4 November 1994) (see E/CN.4/1995/100).

55. The reasons for increasing demand for children in the sexual market are difficult to assess. The former Special Rapporteur attributed it mostly to the fear of AIDS, and the often mistaken perception that the younger prostitutes are less apt to be afflicted by it.

56. Any effort to address child prostitution would not be complete without tackling the issue of sex tourism. It will be recalled that the Special Rapporteur, based on the definition of sex tourism as "tourism organized with the primary purpose of facilitating the effecting of a commercial sexual relationship", defined child sex tourism as "tourism organized with the primary purpose of facilitating the effecting of a commercial sexual relationship with a child" (A/50/456, para. 54).

1. Legal framework for combating child prostitution

57. The Convention on the Rights of the Child refers to the need to protect the child from sexual exploitation and sexual abuse. The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography calls for legislative and other measures to combat sex tourism in both the sending and receiving countries. The draft programme of action for prevention of traffic in persons and the exploitation of the prostitution of others of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1995/28/Add.1) is also applicable, although it does not refer specifically to children and adolescents.

58. The Manila Declaration on World Tourism of 1980 emphasized that spiritual elements must take precedence over technical and material elements in the practice of tourism.

59. The Tourism Bill of Rights and Tourist Code, adopted in 1985, established standards of conduct for States, tourism professionals and tourists on the issue of sexual exploitation. One of the most important elements of this tourism policy document is a call upon States and individuals to prevent any possibility of using tourism to exploit others for the purpose of prostitution.

60. The ICPO/Interpol Standing Working Party on Offences against Minors has forwarded to its national bureaux a programme of action for the prevention of the sale of children and has requested member States to appoint liaison officers on offences against minors.

2. National developments

61. UNICEF offered a conservative estimate that 35 per cent of Cambodian sex workers are girls aged from 12 to 17 years of age. The peace process and the influx of United Nations employees have contributed to the growth in prostitution. One Cambodian health official has estimated that in 1991 there were about 6,000 prostitutes in Phnom Penh, but by the end of 1992 there were up to 20,000. 1/

62. In Sri Lanka it is boy prostitution that is rampant. The local culture dictates that when a girl is given in marriage she has to be a virgin. But boys have a lot of freedom. It is reported that in Germany, especially among

paedophiles, Sri Lanka is known as a "paradise for pederasts". Spartacus, a guide for gays and paedophiles published in Germany, describes Sri Lanka as a place where most sexual desires could be met. The Penal Code of Sri Lanka imposes penalties for the commission of what are considered unnatural offences, including rape and pederasty. Until recently, however, this law has not really been implemented. There are instances of a pederast organization supplying its affluent members with a "survival package" that included information on matters ranging from safe apartments to false passports. 2/

63. Under the Criminal Justice Act of 1990 the Government of the United Kingdom assists law enforcement agents of foreign countries by extraditing for prosecution paedophiles suspected of having committed offences abroad. The British police also shares information about known paedophiles with the police in other countries. For example, the Obscene Publications Branch advised the Thai authorities when a known British paedophile was believed to be travelling to Thailand.

64. In Thailand, under the Extradition Act and the Mutual Legal Assistance in Criminal Matters Act the Attorney-General can provide assistance in criminal matters to foreign States, e.g. by taking the testimony and statements of persons, and providing documents, records and evidence for the prosecution of the alleged offenders to the requesting State.

65. In Sweden, information concerning the extent of child prostitution is very meagre. Organized child prostitution is considered to be non-existent.

66. Women's organizations, which for some time have been following developments in the international marriage trade, report that there is a new trend in Germany. An increasing number of foreign women are allegedly being sold as brides who bring several children with them into the marriage. There is a suspicion that this is being used to conceal the bringing of children to the industrialized countries in order to sexually exploit them. 3/

67. In Canada reform of legal provisions concerning child sexual abuse has increased protection of children from such activities as child pornography, juvenile prostitution and sexual abuse in general and from known and suspected child sex offenders, by depriving the latter of opportunities or access to potential child victims. This reform has also accommodated the special needs of child victims/witnesses in the criminal justice system.

68. New Zealand has recently introduced into Parliament legislation to provide for criminal sanctions in the case of participation by its nationals or residents in sexual acts with children outside its territory. It also now criminalizes the promotion and organization of child sex tours from within New Zealand.

69. Eastern Europe and other former communist countries are new markets in the sexual exploitation of children. There is a rise in child prostitution, notably in Russia and the Czech Republic.

3. Developments in international cooperation

70. There have been developments in international cooperation to combat child sex tourism. The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, May 1995) discussed the issue of sex tourism, trafficking in minors and the use of children in criminal activities. The Congress strongly condemned all forms of violence against children and all other violations of their human rights.

71. Pursuant to the discussions at the Ninth Congress, the Economic and Social Council requested the Working Group of the Commission on Crime Prevention and Criminal Justice, at its next session in 1996, to seek ways to achieve the goal of preventing and eradicating violence against children. The Secretary-General of the United Nations will propose to the Commission at its 1996 session a draft plan of action which will also reflect strategies for the prevention of the sexual exploitation of children for commercial purposes within the context of international travel.

72. The Experts Meeting on Tourist Safety and Security, held in April 1994, and the First Global Research and Travel Trade Conference held in June 1995 in Sweden, both discussed crime prevention measures in tourism.

73. The Saint Vincent Symposia on Trends in Ethics, Law, Social and Health Care, a non-governmental organization active in this field, organized an inter-agency consultation on how to stop organized sex-tourism in June 1995. This meeting adopted a declaration for the protection of children from sexual exploitation in tourism and a draft plan of action 4/.

74. One very great step forward in the field of international collaboration for children was the conference held from 22-24 November 1995 in Bonn on the topic "Sexual misuse of foreign children by Germans abroad", sponsored by the Federal Government of Germany. It will be recalled that section 5, No. 8, of the Criminal Code of Germany was amended on 1 September 1993 to allow prosecution of Germans who travel to south-east Asia for child sex tourism. The conference recognized that "demand" countries cannot exculpate themselves and should be as assiduous as "supply" countries in eradicating child prostitution. It explored various alternatives in pursuing child abusers, in particular cross-border or transnational prosecution, which is perceived to serve as a very effective deterrent to child abuse.

C. Child pornography

75. In Norway, violence and pornography in the media is a growing problem, particularly within the computer industry. New technology, with national and transnational networks, provides anyone with access to pornography, including child pornography. The Norwegian authorities are aware of this problem, and are contemplating adequate measures to deal with it.

76. In 1994, it was reported in the press that a gay magazine editor faced civil action in Belgium instituted by human rights organizations for the alleged production and circulation of a magazine by an international paedophile ring with an estimated 30,000 members. The members received personalized lists of children, mainly outside Europe, and they would then

select a child according to their preference and indicate their choice to a local middleman. In a document obtained by Terre des Hommes, the editor was stated to have offered boys "of every age, shape and type". Human rights organizations took legal action against the editor under Belgian civil law. The case has set a legal precedent, and it led in April 1995 to the enactment of new laws. Under article 8 of chapter III of the Code d'instruction criminelle of Belgium, the editor could be brought before a Belgian court, even though he is not a Belgian national and had allegedly committed the offence abroad.

77. In the United Kingdom, the 1994 Criminal Justice and Public Order Act increased penalties and police powers to tackle child pornography and paedophilia. The Act gives power to the police to arrest without warrant a person suspected of child pornography. It also increases the penalties for possessing indecent photographs of children making it an imprisonable offence (up to six months in jail and a fine of up to £5,000).

78. At the 1994 expert group meeting in Vienna, it was noted that in South Africa, pornography is reportedly rampant among urban élite communities, where "blue movies" are shown to children before abusing them. Sex shops in the city openly display material not suitable for children. Although there is legislation against pornographic magazines, there is little if any enforcement at bookstores and magazine stands.

79. At the same meeting it was reported that the use of children in pornographic activities has also been the subject of recent research and legislation in Canada. In May 1992, the Federal Department of Justice conducted research into the phenomenon of child pornography in Canada. The research indicated that child pornography is not professionally made or commercially available in Canada. It is believed that most makers and consumers of child pornography are paedophiles, operating through underground networks for the purpose of exchanging child pornography. Home-made child pornography which comes to the attention of police is generally in the form of photographs (usually Polaroid to avoid using commercial film developers) or home-made videos.

80. Prior to 1993, there was no explicit reference to child pornography in the Criminal Code of Canada. It was dealt with under general provisions against obscenity. On 1 August, 1993, the Criminal Code was amended creating new offences prohibiting the possession and importation of child pornography, which are subject to maximum terms of imprisonment of 5 and 10 years respectively. It also increases the maximum sentences for the production, sale and distribution of child pornography and possession for such purposes from 2 to 10 years.

81. In Austria, in connection with negotiations on the Convention on the Rights of the Child, the Austrian Nationalrat unanimously passed a resolution on 26 June 1992, requesting that the federal Government take all necessary steps, including legal measures, to prevent and punish perpetrators of child pornography. This parliamentary initiative was triggered by a study on child pornography in Austria commissioned by the Federal Ministry of Environment, Youth and Family.

82. In order to combat more effectively the expansion of a video market focusing on pornography involving children and the sexual abuse of minors connected with it, the parliament passed a specific provision regarding "pornography involving minors" on 16 July 1994. The new section 207a of the Austrian Penal Code imposes criminal sanctions not only for commercial but also for amateur production and distribution of child pornography (non-commercial exchange and black market), thereby establishing an absolute prohibition on trade in child pornography.

83. In Sweden, the Increased Protection for Children Bill was presented to the parliament, amending the provision on child molestation to cover a situation where a child under 15 is induced to be a model for pornographic pictures or to otherwise adopt sexual poses. Criminalization of child pornography cannot come into effect before 1999 as it would entail an issue of constitutionality.

84. The Ministry of Justice of Denmark has proposed an amendment to the Criminal Code which would criminalize the possession of crude pornography.

III. SELECTED CATALYSTS

85. This section is based on the information sent by Governments in reply to the letter sent by the previous Special Rapporteur and which could not be included in his last report to the General Assembly, as well as in reply to the questionnaire sent by the present Special Rapporteur concerning the justice system as a catalyst to combat the sale of children, child prostitution and child pornography.

A. The justice system

86. The Special Rapporteur is convinced that the justice system plays a crucial role not only in remedial action but also in the prevention of child abuse and exploitation.

87. A number of initiatives on the international level address the issue of children in conflict with the law. Among these initiatives are the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). The same cannot be said, however, of the plight of the child victims. The need to protect the child as a victim is nevertheless recognized by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which indicates that sensitivity training regarding the needs of victims should be given to police and legal, health and social service officials. Likewise, one of the recommendations of the Vienna expert group meeting on children and juveniles in detention urges States to ensure that children who have been sexually exploited or who are at risk of being sexually exploited have access to assistance that meets their needs, including access to the mechanisms of justice (E/CN.4/1995/100, para. 50).

88. As mentioned above, the Special Rapporteur sent to Governments and organizations on 21 July 1995 a questionnaire concerning the justice system

and its implementation at the national level. The following Governments replied: Bahrain, Cyprus, Czech Republic, Denmark, Ethiopia, France, Guatemala, Malta, Myanmar, Sweden, United Kingdom of Great Britain and Northern Ireland, Zimbabwe. The following organizations also sent replies: Association mondiale des amis de l'enfance, Association féminine pour le sauvetage des jeunes et enfants de la rue, Butterflies, Childhope, Radda Barnen. It should be noted that replies received after the submission of the present report will be included in the next report to be submitted by the Special Rapporteur.

1. Preventive measures

89. Few States have specifically targeted programmes dealing with the sale of children, child prostitution and child pornography. Children falling into these categories are classified as children in need of care and will be cared for by those organs of Government responsible for the protection and general welfare of children and, where they exist, non-governmental institutions sharing joint responsibility for disadvantaged children. There are signs, however, that more States are beginning to pay more attention to these social phenomena. Cyprus is currently reviewing the provisions of its Criminal Code and Children's Law, with a view to extending their scope to cover the aforementioned activities explicitly.

90. Some countries have made specific provisions for child protection. For example, the Philippines, has passed Republic Act No. 7610 (Special Protection of Children against Child Abuse and Exploitation and Discrimination Act) and Presidential Decree No. 603 (Child and Welfare Code).

91. In a number of States voluntary organizations provide social welfare programmes, information and services for protection of children from sexual abuse and exploitation. For example, in the Netherlands, members of the public can report anonymously their suspicions of child abuse to confidential medical centres for the prevention of cruelty to children. The Society against Child Abuse (VKN), subsidized by the Government, provides information to the public and to professional and lay organizations.

92. Some countries, such as the Czech Republic, have established special working groups to address issues arising out of the abuse and maltreatment of children. Sweden currently has a commission looking into ways to control child pornography which will also look into the whole question of child prostitution.

93. With regard to the effectiveness of these programmes, little detailed information has been reported. There have been attempts to alleviate the suffering and maltreatment of child victims. Inevitably, problems persist in the implementation of social care programmes and the enforcement of existing legislation. In India, for example, NGOs claim that the law contains many lacunas, making it difficult for journalists or social workers to make a difference in the level of child prostitution. They insist that there is not enough support from the political establishment or law enforcement agencies. Conversely, schemes to publicize the availability of counselling and schemes in France have met with some success. The téléphone vert enfance maltraitée national scheme, instituted in 1989, allows victims of abuse to inform the

authorities confidentially. Furthermore, a better programme of making teachers more aware of the scale of the problem has led to improved detection of abused victims and a more structured response framework for dealing with victims.

2. Measures of intervention

94. One of the main issues dealt with by the questionnaire is the determination of whether sale of children, child prostitution and child pornography are criminal offences.

(a) Determination of the offence

(i) Sale of children

95. A large proportion of States around the world recognize that the sale of children for personal remuneration is a direct infringement of that child's human rights. Sale of children can be for purposes of, inter alia, adoption, exploitation, prostitution or pornography. In those States where these activities take place, there is legislation banning the sale of children outright. Depending on the particular social makeup of a country and the type of sale that is carried out, legislation is tailored to the particular problems emerging from these types of transaction.

96. In the Czech Republic, traffic in children constitutes a criminal offence and the law provides for the criminal prosecution of an offender who "for remuneration purposes places a child in the charge of another person for the purpose of adoption, use of child labour or for other purpose" (Criminal Code, section 216).

97. The Indian Penal Code, particularly sections 372 and 373, deals strictly with the sale of children particularly for prostitution purposes. Both buyers and sellers are caught in the legal net:

> 372: Whosoever sells, lets to hire or otherwise disposes of any person under the age of 18 years with the intent that such person shall be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such persons will, at any age, be employed or used for any such purpose shall be punished with imprisonment ... ."
>
> 373: "Whoever buys, hires, or otherwise obtains possession of any person under 18 years of age, with the intent that such person shall, at any age, be employed or used for the purpose of prostitution or illicit intercourse or any unlawful or immoral purpose or knowing it to be likely that such person will at any age be employed or used for such a purpose, shall be punished by imprisonment ... ."

98. In States where there is no problem of sale of children there is usually no specific sanction against that type of offence. Some States prefer to rely on general legislation to deal with these kinds of issues.

99. In Guatemala, many "nurseries" that were secretly involved in kidnapping children for fictitious adoptions have been closed down. The individuals responsible have been charged with offences "overlapping" with the sale of children, for example, kidnapping or abduction, subjecting another to servitude and/or inducing a minor to leave home.

100. Denmark punishes the deprivation of liberty aspect of the sale of children:

> "Any person who deprives another person of liberty shall be liable to imprisonment ... . If the deprivation has been effected for the purpose of gain ... the penalty shall be imprisonment for not less than one or more than 12 years" (Criminal Code, section 261).

101. Although many countries have legislation banning the sale of children, few prosecutions actually take place. One of the main reasons is that few individuals come forward to report crimes. It is well known that in some countries, there is a perception that the criminal justice system does not function efficiently. Corrupt officials and a judicial system that lacks true independence can discourage victims from coming forward.

102. Alternatively, there may be a host of socio-cultural reasons for a failure to report crimes. In Zimbabwe, for example, there is a traditional cultural practice of pledging young girls in marriage for a consideration. This constitutes "sale" of children and is prohibited by section 11 of the African Marriages Act, chapter 238. However, no prosecutions have been recorded and this has been attributed to the cultural beliefs of the people involved, who are unwilling to change what may be centuries-old patterns of behaviour.

(ii) Child prostitution

103. The act of child prostitution, like adult prostitution, is not usually singled out as a criminal offence in most States. In France, like many other western countries, prostitution has always been tolerated as a "necessary evil".

104. Child prostitution is usually dealt with under legislation designed to cope with prostitution generally, and attacks the instigator of the prostitution or those living off the earnings from prostitution. Offenders may also face the related criminal charges of rape, indecent assault and sexual exploitation of minors. The penalties for such crimes are usually aggravated if the child is of a very young age. In Guatemala, for example, any individual raping a child under 10 years of age faces the death penalty.

105. Some countries attempt to address the problem of child or juvenile prostitution by attacking the parent, guardian or holder of legal authority over the child for failure to supervise the activities of the child effectively.

106. In the United Kingdom, prostitutes and their clients can be convicted on the basis of soliciting for custom. Legislation also targets brothel owners, those living off the earnings of prostitution and pimps who procure women for

prostitution or who encourage or incite anyone into prostitution. The offence is aggravated if the victim is under 16 or if the victim is under the care of the offender at the time. In Sweden, the definition of procuring has been widened to include not only traditional pimping activities but also others such as sexual advertisements in newspapers and travel agency activities.

107. Child prostitution is more of a problem in some countries than others. For instance, in Peru, working children, street children and children in domestic service are the most vulnerable groups in society. Children are lured into prostitution after rebelling against family and societal values and find no other way to survive.

108. In the Philippines, a bill has been filed in Congress classifying child prostitution and paedophilia as heinous crimes, thereby increasing the penalty of life imprisonment to death. Another bill proposes the creation of a special court specifically for child abuse and granting witnesses in child prostitution and paedophilia cases automatic coverage under the Witness Protection Program Act.

(iii) Child pornography

109. With the speed of technological change, the issue of child pornography becomes increasingly important. It is now possible to receive at one's home obscene or pornographic images through electronic information networks. Clearly this poses a huge problem to those States who wish to prevent the distribution of such images.

110. A significant number of States have passed legislation designed to halt the distribution of pornography among their citizens. Most of these States, however, do not specifically single out child pornography as being particularly abhorrent, preferring to rely on broadly worded clauses designed to catch all attempts at corrupting or endangering public morals.

111. A typical clause that attempts to halt the spread of pornography attacks the "importing, manufacturing, circulating, distributing, disseminating or making publicly accessible, written pornographic works, sounds, images, or other depictions endangering public morals" (Czech Republic Criminal Code, sect. 205).

112. The definition of pornography also varies between countries. Some, like the Czech Republic, prefer to leave the definition to the courts while others like Zimbabwe, define it loosely as undesirable material that is "indecent, offensive or harmful to public morals" (Censorship and Entertainments Control Act of Zimbabwe, art. 11).

113. The Nordic countries are at the forefront of attempts to wipe out pornography depicting children or images of children. Under section 235 of the Danish Criminal Code, not only is it a criminal offence to produce, commercially sell or disseminate pornographic materials, but also to procure obscene photos, films or similar objects. Furthermore, Act No 1100 of 21 December 1994, in force in March 1995, makes the possession of pornographic materials depicting children in a sexual act of any form a criminal offence. In Sweden, possession of child pornography is not currently prohibited.

Amending current legislation has proved to be difficult owing to the constitutional guarantee of freedom of the press. In 1994, the parliament took the first step towards a ban on possession of pornographic materials, but a final policy decision will not take place until 1999 at the earliest.

(b) Procedural safeguards for minors before, during and after trial

(i) Those entitled to bring the complaint

114. If a child is victimized, he can get redress for what he has suffered, usually through a criminal and/or a civil claim.

115. On a criminal charge, the public prosecutor, representing the State, has the right of action to bring a case to trial. Typically, as is the case in France, he acts on complaints made by the injured party or those with rights over the minor, such as parents or guardians. Additionally, an official denunciation by State officials in the country where the crime was committed is sufficient to start a legal action.

116. Some countries allow criminal proceedings to be instituted ex officio at the instance of anyone who has learned about the offence. The public prosecutor is then obliged to prosecute all criminal offences brought to his attention (Czech Republic Criminal Code, sect. 2).

117. In a civil action, the victim or his representative usually has the right to bring a claim to court for compensation for the suffering he has endured. There are also certain non-governmental organizations for the welfare of children who can take up the case should problems arise in the processing of compensation claims.

(ii) Legal assistance for children

118. Most States have replied that legal assistance in various forms is available to enable child victims to bring a case to court. Some will consider the worthiness of the case before advancing funds whilst others grant automatic aid to the child in all proceedings involving his claim. This includes access to a corps of specially trained lawyers and help with preparing an individually tailored defence.

119. The minors' interests remain paramount right through the litigation and the State aid even extends to foreign minors that are not habitually resident in the country.

(iii) Role of law enforcement officers, social workers and prosecutors at the time of filing the case

120. Public prosecutor. In most countries the public prosecutor is responsible for the conduct of the case. He makes representations to the court in favour of the victim. In Myanmar, his role is to assess the strength of the case and to scrutinize supporting evidence. He takes into consideration the age and character of the child and the environmental circumstances surrounding the commission of the offence.

121. Social workers. Social workers provide courts with detailed information on a minor's family background and physical and psychological status. They can also initiate additional investigations and additional acts and represent the child when the child's parents are unable to do so.

122. Law enforcement officers. In the United Kingdom, the police have sole responsibility for investigating criminal cases and preparing case files. After the case has been filed with the court, the law enforcement officer's role is restricted to that of a witness.

(iv) Protection programmes for the security of the child during trial

123. Certain States make provision for the fact that a child who has to testify during a trial should be treated with special care and attention. In the United Kingdom, child witnesses, in cases of violent or sexual offences, give their evidence in the form of a video-recorded interview conducted by police and social workers. They are also permitted to give evidence by a live television link from an adjacent room in the courthouse and in cases where live testimony is essential, a screen may be erected in the court preventing the child from seeing the defendant. A child liaison officer is always present to ensure that the child spends only the time that is absolutely necessary at court.

124. Other countries insist on the presence of an experienced person to help conduct the hearing in the most appropriate manner (Czech Republic Code of Criminal Procedure, sect. 102). Experts in forensic psychiatry can use sensitive methods to elicit testimony from child witnesses, for example, using puppets or toys so that the child can demonstrate the abuse.

125. The hearing of child cases varies from country to country. A number of courts try child offenders in camera. They allow only parents, guardians, representatives from welfare institutions, witnesses and experts to attend. Other courts will hear juvenile cases in public unless there are compelling reasons not to do so.

126. The French authorities have a system for preserving the security of minors in the run up to and during the trial, some elements of which are shared by other countries. If the child is not in danger from anything or anyone in his natural environment, he is left under the supervision of his parents or guardians. When there is a threat to the child's safety from his home environment, for example when a suspected abuser is domiciled at or near the child's habitual place of residence, the authorities may still decide that the best place for him is within the family environment. Advice and counselling will be provided by the State to try and help the family cope with the moral dilemmas and difficulties that may have arisen. In addition, strict conditions are imposed on the child requiring him to seek regular professional counselling, to attend school regularly or report to his place of training or work. In extreme cases, the child may be withdrawn from his family environment, and entrusted to the care of other family members unconnected to the allegations of abuse or maltreatment, or to another educational establishment or State institution with responsibilities for child care and welfare.

127. Other countries have similar sorts of welfare provisions, the main difference being the stage at which the child is taken from his home environment.

3. Administrative and rehabilitative measures

128. Most States seem to have made at least some kind of provision for the rehabilitation and reintroduction back into daily life of children who have been through the court system. A lot of the rehabilitation programmes are designed to encourage young offenders to adopt more socially productive lives in their respective communities. During this process, social workers and probation officers meet at periodic intervals to review the progress of each individual.

129. For child victims, the kind of help available depends on the nature of the trauma that the minor has suffered. In the Czech Republic, rehabilitation programmes for child victims are being introduced. The Child Crisis Centre runs programmes with the active participation of child psychologists and psychiatrists.

130. In the United Kingdom, counselling and support services are provided by a wide range of bodies such as local authority social services departments, child and adolescent mental health services and the voluntary sector. Every child suspected of having been sexually abused is assessed under a set of child protection procedures contained in the publication Working Together. Those showing severe emotional disturbance are treated with additional therapeutic intervention.

131. In Panama, government agencies, including the Social Welfare Department of the Ministry of Labour and Social Welfare and the Technical Judicial Police, cooperate closely to provide minors in difficult circumstances with foster homes.

132. On a temporary basis, State-subsidized institutions care for minors. This includes protection, shelter, food, education and recreation for minors aged between 5 and 18. The minors are returned to their families when a solution to their problem has been found. If this is not possible, the child may be adopted or included in the programmes of NGOs providing care for minors, such as the Red Cross and SOS Children's villages.

133. The Indian Government has instituted a number of measures concerning the rehabilitation and future welfare of child prostitutes. In a recent case the Supreme Court made an important judgement enforcing the right of the children of prostitutes to be voluntarily segregated from their mothers, with a view to rehabilitating the children. They were to be installed in halfway houses where the mothers would have occasional access. Where mothers refused to be separated from their children, health and vocational services were to be offered on site.

134. In partnership with NGOs, the Indian Government has attempted to minimize the problem of child prostitution. This has included the setting up of a child care and counselling centre in Delhi, together with the Joint Women's Programme. In Calcutta, a "Development Dialogue" has been initiated in areas

from where large numbers of women used to migrate or were liable to migrate. Under the scheme, vocational training, particularly in arts and crafts, is given to young women; this seems to be slowing the number of women turning to prostitution as a living.

135. United States Government officials advise that education must begin in the courts, where local judges need to realize the scope and human impact of sexual exploitation.

136. In the Philippines, organizations such as Childhope Asia Philippines are involved in projects such as pre-employment skills training for female prostitutes. The project attempts to put 25 to 30 teenage prostitutes through a rehabilitation programme every three months. This includes out-of-city secure housing, education, values clarification, family reunification and appropriate pre-employment vocational training. Such training can include not just formal education but also skills such as budgeting, accounting and marketing.

B. The education system

137. In 1991, in order to combat child abuse and raise awareness of the problem, an educational kit was prepared in the Netherlands for use in primary schools, a course was given for secondary school teachers and two educational packages for students and teachers in secondary schools were prepared.

138. In 1994, in order to commemorate the International Year of the Family, a national committee was established in the Syrian Arab Republic, under the chairmanship of the Minister of Social Affairs and Labour. This committee held a symposium in May 1994 at which papers were presented on, inter alia, education and information-related aspects of the role of the family in the upbringing of children. With regard to education, the symposium made the following recommendations:

(a) To establish an integral interlinkage in the field of education between family, school and society in order to ensure the proper upbringing of the next generation;

(b) To monitor the promotion and development of the policy of eradicating illiteracy, particularly among parents, and covering the various types of illiteracy, i.e. educational, social, economic and cultural.

139. UNICEF, in its programme of action, endorses the goal of universal access to basic education. There is strong support for promoting the rights of the child, particularly the girl child, and encouraging the ratification and implementation of the Convention on the Rights of the Child.

140. UNESCO has translated into several local languages the Convention on the Rights of The Child and is also funding illustrated versions of the Convention for use by children in schools. In cooperation with UNICEF, UNESCO will endeavour to have the Convention adopted by Ministries of Education as a basic text in civics classes in primary school. Governments can prevent child prostitution by introducing educational programmes that would inform children how to fight against child prostitution.

141. Governments can through rehabilitation programmes help to educate children who are victims of prostitution. The Government of Thailand funded a project to rehabilitate 500 child victims of prostitution in 17 provinces; half the funds will be spent on education programmes for girls.

C. The media

142. The media plays an important role in how the issue of child abuse is perceived. Often matters that concern sex are sensationalized. A constructive way of helping is to emphasize people and programmes that provide education and care.

143. The Government of the Netherlands has funded a national advertising campaign to inform the public at large about what they can do to help combat child abuse. Problems of sexual abuse of children have been given specific attention in a number of government memoranda on sexual violence. The Dutch Society Against Child Abuse (VKM), working at the national level is subsidized by the central Government and has projects funded from private donations as well. In 1991, the VKM launched a two-year campaign called "There are some secrets you must talk about", aiming at preventing child abuse. This campaign had two target groups: children aged 8 to 14 years and adults. It also had two aims: encouraging abused children to break through their isolation and look for help and appealing to adults' sense of responsibility by not leaving abused children on their own. In order to reach these groups, the campaign used the mass media. Some of the most important activities during the campaign were:

(a) A short and a long television spot which have been broadcast regularly;

(b) Three television films for children;

(c) Two television drama films;

(d) Posters and stickers referring to the child help line and the infoline, which have been widely spread all over the country on billboards;

(e) Advertisements in newspapers, magazines and schools;

(f) A large amount of free publicity on radio and television and in the press;

(g) A special helpline for children.

144. In 1994, in commemorating the International Year of the Family, a symposium was held in the Syrian Arab Republic, which made some recommendations with regard to the important role information and the media can play. It recommended that:

(a) Emphasis should be placed on the important role that the media plays in educating and stimulating the awareness of families, and also on the need for careful choice of the content and method of transmission of material intended for families;

(b) Information policy should be formulated with a view to promoting the welfare of families and safeguarding their members from delinquency in order to protect them and their community.

145. In Colombia, the press attempts to deal with the sale of children, child prostitution and child pornography by raising the awareness of the civil society and by carrying out investigations on certain cases. In that context, it was reported that young girls are the principal victims of sexual abuse; in 1995, the police reportedly received 170 reports of sexual abuse of female minors. Of these, 30 are said to be aged between 3 and 10 years old. The press pointed out that the leniency of the Penal Code and the criminal procedures does not help to curb the occurrence of such offences. The Code classifies such offences into two categories: sexual violence, which carries a minimum sentence of one year and involving bail but no imprisonment before conviction, or rape, which carries a minimum sentence of two years but conditional release can be obtained before conviction. 5/

IV. RECOMMENDATIONS

A. Recommendations for action at the international level

146. The Special Rapporteur recalls the recommendations contained in her report to the General Assembly. These include:

(a) An inventory of all initiatives and programmes of the United Nations (including its affiliate agencies) and the civil society addressing the concerns of the mandate. The Special Rapporteur had sent out questionnaires addressed to those entities preparatory to making an extensive listing of the efforts being undertaken in the search for solutions. These should be systematically analysed;

(b) Regional or international conferences of behavioural scientists targeted primarily at ways and means of sensitizing the three chosen catalysts, the education system, the media, and the justice system, in the field of child protection;

(c) Regional and international conferences of specialists in the education system, the justice system and the media aimed at the eradication of child abuse and sexual exploitation.

147. In addition to the above, regional and international conferences should be convened specifically addressing the issue of prosecution of child exploitation offences with an international component, whether international trafficking or sexual abuse by foreigners. These conferences should attempt to determine the most expeditious among the alternatives, i.e. extradition, the prosecution in situ of the crime, or bilateral, regional or multilateral cooperation.

148. There should also be a review of legislation, especially in the sending and receiving countries, with a view to their harmonization. One of the greatest deterrents to extradition, for example, is the disparity in procedural aspects of investigation and prosecution and the divergence in imposable penalties between the country where the crime was committed

and the country of the alleged offender. These would refer not only to the length of the punishment but also to the manner in which it will be served.

149. In some countries, in an effort to deter child abuse, extremely severe penalties are imposed on those convicted. While this strategy may have some measure of success on the national level, it may prove to be counterproductive in that it may deter cooperative efforts with the country of the offender and making extradition or local prosecution virtually impossible.

150. There should be improved communication and better coordination between all the entities within the United Nations system directly concerned with the question of child abuse: the Committee on the Rights of the Child, UNICEF, the Centre for Human Rights, the crime prevention and criminal justice programme, the Commission on the Status of Women and the Working Group on Contemporary Forms of Slavery.

151. In addition, the Special Rapporteur on the sale of children now has a mandate to investigate and report on these practices. The mandate of the Special Rapporteur on violence against women includes violence affecting "girl children", such as child abuse, incest, prostitution and other forms of sexual abuse and exploitation. The Special Rapporteur on extrajudicial, summary and arbitrary executions lists the Convention on the Rights of the Child as among the standards which are taken into account in the exercise of his mandate. The Special Rapporteur on torture and the Committee against Torture have competence over sexual and physical abuse, when committed by, at the instigation of or with the approval of government officials. The Special Rapporteur appointed to monitor the situation of human rights within given countries can also make a valuable contribution to evaluating compliance with international standards regarding child victims of violence and sexual exploitation. There is a need to devise a quick action standard operating procedure to respond to urgent cases. This can be established by cooperation among the above entities and the allocation and assumption of responsibilities.

B. Recommendations for action at the national or local level

152. Upon scrutiny, a myriad of laws concerning children can be found in all countries at the national and local levels. However, many of these laws are curative rather than preventive, and law enforcement usually leaves much to be desired. Preventive measures are generally considered to be less expensive and therefore more "deliverable", especially for developing countries. The Special Rapporteur therefore reiterates the recommendations contained in her report to the General Assembly on how the three catalysts, the media, the education system and the justice system, can be harnessed as partners in the fight against child abuse. These three are invaluable factors, especially in the field of prevention. In her report, she enumerated certain measures and strategies that can serve as guides on how this partnership could be effected.

153. Furthermore, the Special Rapporteur makes the following recommendations:

(a) To build a network of contacts, including governmental and non-governmental agencies, for standardized gathering of data. What most countries need is a statistical overview of the situation in order to gain

proper perspective of the problems attendant thereto, and also to serve as a basis for transnational analysis. In Brazil, for instance, the Parliamentarian Commission of Injury set up by the National Congress in 1993 to consider the problem of child exploitation and prostitution pointed out that there are no reliable data on child prostitution in Brazil; the disparity - ranging from 2,000 to 500,000 - of the numbers alleged by different sources indicates the need for an official survey;

(b) To build a network of contacts for the gathering of evidence concerning specific cases, with the assistance of the specialized agencies;

(c) To designate a focal point which will coordinate the above activities. This focal point can also serve as the monitoring centre for the country's compliance with international standards. This monitoring should be much more detailed and comprehensive than the monitoring carried out by an international office;

(d) On child sex tourism, the situation requires that Governments, not only national tourism administrations, as well as the operational sector of tourism, define responsibilities and identify possibilities for joint action. This should be coupled with monitoring mechanisms for the effective imposition of sanctions;

(e) There should be a review of national laws to determine if they conform to international standards. As discussed above under recommendations for international action, this will remove barriers to bilateral or multilateral cooperation for the punishment of offenders.

Notes

1/ E. Arving, "Child prostitution in Cambodia: Did the UN look away?", The International Monitor, 1993, p. 5.

2/ P.B. Aluvihare, Symposium on Sexual Misuse of Foreign Children by Germans Abroad, Bonn, 22-24 November 1995.

3/ Dr. Burkard Gnarig, ibid.

4/ Brigitte Doring, ibid.

5/ "Niñas, las principales víctimas de abuso sexual", El Tiempo, Bogotá, 8 July 1995.